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10/806,023

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EXAMINER

JAKOVAC, RYAN J

ART UNIT

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2445

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/806,023	<b>Applicant(s)</b> CURCIO ET AL.	
	<b>Examiner</b> RYAN J. JAKOVAC	<b>Art Unit</b> 2445	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-9,37,43,45,46,51,53,54,56-62,64,66 and 69-74 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-9,37,43,45,46,51,53,54,56-62,64,66 and 69-74 is/are rejected.
- 7) ☒ Claim(s) 6,7,60 and 61 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/27/2009</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 1, 6-7, 9, 45-46, 57, 60-61, 64, 69-74 rejected under 35 U.S.C. 101; these claims cites a method but fails to (1) positively recite the statutory class to which they are tied to, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. Claim 1 comprises neither (1) nor (2). The method is directed towards receiving data, however, this/these element(s) is/are interpreted as being embodied in software or a program per se and thus do not belong to any statutory class. Regarding claims 45-46 these claims recite terms absent from the specification (see below) and are interpreted to be software per se. Remaining claims are rejected for the same reasons as claim 1.

### ***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 45 recites "communication unit". Claim 46, 73 recites "reception unit". These terms are absent from the specification.

***Claim Objections***

4. Claims 6-7, 60-61 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claim language is not further limiting. For instance, claim 7 recites that the data be either real-time data or non-real-time data. The limitation is not further limiting to the data recited the particular independent claims which is inherently either real time or non-real time.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 4-9, 37, 43, 45-46, 51, 53-54, 56-62, 64, 66, 69-74 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 5-7, 43, 45-46, 57, 59-61, 64, 66, 69-70 are rejected under 35 U.S.C. 102(e) as being anticipated by US 7043196 to Kawai et al (hereinafter Kawai).

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Regarding claim 1, 43, 45-46, 64, 66, 69-70, Kawai teaches a method comprising:

receiving a repair type parameter that is indicative of a point-to-multipoint repair session, a point-to-point repair session or both (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47, fig. 5-6.),

wherein said repair session is requestable by at least one receiver that did not correctly receive data sent to a plurality of receivers in a transmission session (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47, rebroadcast requests.), and

wherein in said repair session, at least a part of said data sent to said plurality of receivers in said transmission session is sent at least to said at least one receiver requesting said repair session (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47, data rebroadcast.), and

receiving data in said repair session as indicated by said repair type parameter (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47, rebroadcasted data is received.).

Regarding claim 57, Kawai teaches the method according to claim 1, wherein said repair type parameter is communicated before or during the establishment of said transmission session (Kawai, col. 1:35 to col. 2:17, col. 4:15-67, establishment of return channel.).

Regarding claim 5, 59, Kawai g teaches the method according to claim 1, wherein said data is transmitted in said transmission session from said sender to said plurality of receivers in a

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broadcast or multicast operation (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47.).

Regarding claim 6, 7, 60-61, Kawai teaches the method according to claim 1, wherein said data transmitted in said transmission session is streaming data or non-streaming data, real-time data or non-real-time data (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47.)

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 58, 71-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawai.

Regarding claim 4, 58, Kawai teaches the method according to claim 1. It would have been obvious to combine transmitting data from a sender to a plurality of receivers over an IP

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based network with Kawai since Kawai teaches transmitting data from a sender to a plurality of receivers and transmitting over an IP network is an obvious variation of transmission protocol.

Claims 71-74 are rejected for similar rational as claims 4 and 58. Further, the limitations of claims 71-74 are only found in the nonfunctional descriptive material and are not functionally involved. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the nonfunctional descriptive material with the claimed invention because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the descriptive material does not patentably distinguish the claimed invention.

9. Claims 8-9, 37, 51, 53-54, 56 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawai in view of Applicant's Admitted Prior Art (hereinafter AAPA).

Regarding claims 8, 9, 51, 54, 62, Kawai teaches the method according to claim 8. AAPA teaches wherein said wireless network is a mobile network that at least partially implements a Multimedia Broadcast/Multicast Service as defined by a Third Generation Partnership Project (Specification, page 1, paragraph 4 discloses transmission of data over radio (i.e. wireless network) in a MBMS as defined by 3GPP.).

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to combine wherein said wireless network is a mobile network that at least partially implements a Multimedia Broadcast/Multicast Service as defined by a Third Generation Partnership Project as taught by AAPA with Kawai in order to provide flexible and efficient mechanisms to send common information from one sender to multiple receivers (AAPA, paragraph [0002]).

Regarding claim 37, 53, 56, Kawai teaches the method according to claim 1. AAPA teaches wherein said transmission of said data in said transmission session from said sender to said plurality of receivers is at least partially controlled by the File Delivery Over Unidirectional Transport protocol (Specification paragraph [0011], FLUTE is used in multicast networks.).

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to combine wherein said transmission of said common data from said sender to said plurality of receivers is at least partially controlled by a File Delivery Over Unidirectional Transport FLUTE protocol as taught by applicant's admitted prior art with Kawai in order to send common data from one IP based entity to a plurality of IP based hosts as well as for the delivery of large and small files to many IP based hosts as well as for the delivery of large software updates to many IP based hosts simultaneously (AAPA, paragraph [0011]).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 20030200499 to Khayrallah et al.



**11. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN J. JAKOVAC whose telephone number is (571)270-5003. The examiner can normally be reached on Monday through Friday, 7:30 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on 571-272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan Jakovac/

/VIVEK SRIVASTAVA/

Supervisory Patent Examiner, Art Unit 2445